Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

No. 76-538

OCTOBER TERM, 1976

GORDON LEITCH, JR., AN INDIVIDUAL,
PLAINTIFF-APPELLANT-PETITIONER

v.

STATE OF OREGON, DEPARTMENT OF REVENUE,
AND TRI COUNTY METROPOLITAN
TRANSPORTATION DISTRICT,
DEFENDANTS-APPELLEES-RESPONDENTS.

PETITION FOR A WRIT OF CERTIOARAI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GORDON LEITCH, JR.
919 S.W. Taylor Street
Portland, OR 97204
Petitioner Pro se

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IN THE SUPREME COURT

OF THE UNITED STATES

No. _____

OCTOBER TERM 1976

GORDON LEITCH, JR., an individual,

Plaintiff-Appellant-Petitioner

v.

STATE OF OREGON, DEPARTMENT OF REVENUE, and TRI COUNTY METROPOLITAN TRANSPORTATION DISTRICT,

Defendants-Appellees-Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Gordon Leitch, Jr., an individual, prays that a Writ of Certiorari issue out of this Court to review the judgment of the United States Court of Appeals for the

Ninth Circuit entered in the above entitled case.

OPINIONS BELOW

Petitioner initially sought relief and monetary protection by means of a conference with the State of Oregon Department of Revenue on December 3, 1971. By determination letter of January 6, 1972, Appendix A (A. 40)[1] Respondents found petitioner to be an "employer" within the meaning of ORS 267.380. The statute appears in Appendix K. At this point, and during all subsequent proceedings, petitioner asserted the federal

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1 References in this petition to the appendix are indicated by "A" followed by the page number. "R" refers to the record certified and transmitted from the United States District Court for the District of Oregon to the United States Court of Appeals for the Ninth Circuit. "Tr" refers to the transcript of testimony in the United States District Court for the District of Oregon.

constitutional arguments presented here.

Petitioner requested and was granted a hearing before the State of Oregon Department of Revenue on June 9, 1972. The opinion of the hearing officer and order of the Department of Revenue, entered October 18, 1972, appears verbatim as Appendix B (A. 43).

Petitioner then appealed to the Oregon Tax Court which dismissed his complaint as not being within that court's jurisdiction. The Oregon Tax Court opinion appears as Appendix C (A. 49).

The Circuit Court of the State of Oregon for the County of Washington sustained a demurrer to the Petitioner's complaint for declaratory relief, No. 33-471; the order and judgment sustaining demurrer is unreported

and appears as Appendix D (A. 51). The opinion of the Court of Appeals of the State of Oregon, affirming the Circuit Court, is reported in Leitch v. Department of Revenue, 16 Or. App. 627, 519 P.2d 1045 (1974) and appears as Appendix E (A. 53). The Court of Appeals denied reconsideration on April 10, 1974, and the Supreme Court of the State of Oregon denied review on April 23, 1974. The letters advising of these unreported determinations appear as Appendices F and G (A. 58-59).

Petitioner then sought declaratory relief in the United States District Court for the District of Oregon; the opinion of the Honorable Otto R. Skopil, Jr., denying declaratory relief, is not officially or unofficially reported. It is appended verbatim in Appendix H (A. 60).

The United States Court of Appeals for the Ninth Circuit, in an unreported memorandum opinion, merely adopted the reasoning of the District Court and affirmed without comment on July 26, 1976. Appendix I (A. 68). Appellant's petition for rehearing was denied August 27, 1976. Appendix J (A. 69).

JURISDICTION

The judgment sought to be reviewed is dated July 19, 1976, and was entered of record July 26, 1976. The order denying rehearing is dated August 25, 1976 and was entered August 27, 1976.

The statutory provisions believed by petitioner to confer jurisdiction on this Court to review the judgment in question are 28 U.S.C. § 1254(1) and 28 U.S.C. § 2101(c), which are reproduced in relevant part in Appendix K (A. 73, 75).

QUESTIONS PRESENTED FOR REVIEW

1. May a state government require payment of a tax in any form other than gold and silver alloy coin under the absolute limitation of Article I, § 10, United States Constitution and the Rule contained in Lane County v. Oregon, 74 U.S. (7 Wall) 71 (1868)?

2. Does the arbitrary executive or legislative exemption of certain competing employers from the payment of local mass transit taxes violate the equal protection of the laws (and Amendment XIV(1), Constitution of the United States) guaranteed to other employers in the same class who cannot escape the tax?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following federal and state statutes relevant to this petition are

reproduced verbatim in Appendix K (A. 73): United States Constitution, Article I, § 10, cl. 1, Article VI, para. 2, and Amendment XIV(1); 28 U.S.C. § 1254(1); 28 U.S.C. 1201; 28 U.S.C. 1291; 28 U.S.C. 1343; 28 U.S.C. § 2101(c); 31 U.S.C. § 314; 31 U.S.C. § 392; ORS 267.360; ORS 267.380(1)(A); ORS 267.385; ORS 317.080(4).

STATEMENT OF THE CASE

A. Statement of Facts.

This case involves objection by Petitioner to the assessment and payment of a mass transit district tax as an invasion of his individual rights guaranteed by the United States Constitution. The Oregon Legislative Assembly in 1969 authorized the creation of mass transit districts. Or. L. 1969, c. 643, codified as ORS 267.010-267.990; See Appendix K for pertinent sections (A. 77-81). The

Tri-County Metropolitan Transit District (hereinafter referred to as "Tri-Met") ensued. ORS 267.385 directs imposition of an employer payroll tax upon certain selected employers, Appendix K (A. 79), to support the services of the mass transit district. Tri-Met attempted to assess and collect such a tax from Petitioner pursuant to that statute.

Petitioner practices ophthalmology within the Tri-Met mass transit district and enjoys membership in two classes of competitors. He competes within his professional subspecialty with other ophthamologists in the area, some of whom are retained on state payroll as members of the faculty of the University of Oregon Medical School (Tr. p. 9). Faculty members are permitted to maintain a private practice and are allowed to

utilize state facilities in such private practice (Tr. p. 9). The State of Oregon subsidizes this competing private practice by absorbing these opthalmologists' overhead expenses, such as secretarial salaries, utility costs, office rent, and the like (Tr. p. 9).

Petitioner likewise competes for the consumer dollar within the class of service businesses and industries. These other competitors include banks, insurance companies, savings and loan associations, and insurance agents, and similar service enterprises.

Petitioner fits within the statutory definition of "employer" for purposes of the Tri-Met employer payroll tax, ORS 267.380. Appendix K (A. 78). This statutory definition also embraces his colleagues at the Medical School and his

service business competitors, such as banks, insurance companies, savings and loan associations, insurance agents, and other financial corporations. However, the Tri-Met forms used in collecting the tax arbitrarily direct that certain employers are exempt and immune from the tax and need not register nor file quarterly returns. Attachment to form 510 T (Rev. 5-71), Appendix L (A. 82). (See R. p. 45). These exemptions are without statutory support and are not included in the Tri-Met Regulations, but appear only on the tax forms. Excluded employers include enumerated governmental bodies, charitable or eleemosynary organizations, "State and National Banks, Savings and Loan Associations, other Financial Corporations, ... Insurance Companies, [and] Insurance Agents ... to the extent

of their insurance business...". Ibid. Appendix L (A. 82). (See R. pp. 37, 45). The statutory exclusions referred to in ORS 267.380(1)(b), Appendix K (A. 78) [referring to ORS 317.080, Appendix K (A. 81)] does not exempt such entities. ORS 267.360, Appendix K (A. 77), legislatively exempts insurance carriers and their non-resident representatives from taxation. No provision of the enabling act authorizes the exclusion of resident agents or the other entities from the sweep of the tax.

Petitioner challenged the assessment and application of the Tri-Met tax as an invasion of his rights under the U.S. Constitution, Article I, § 10 and Amendment XIV. As a result of Petitioner's protest and non-payment, Respondent Department of Revenue, which is charged

with enforcement and collection of the Tri-Met tax, issued a warrant and writ of execution on November 1, 1971 referring to account no. "T30436 OT 470." Although the warrant did not in any manner identify the tax sought to be collected, Petitioner was able, albeit with considerable difficulty, to identify the tax involved (R. p. 37; Tr. pp. 4-6, 10).

On three occasions -- April 3, 1970, April 25, 1970, and January 26, 1973 -- Petitioner attempted to pay his tax due in a manner consistent with his coinage rights (R. p. 44) under the U.S. Constitution, Article I, § 10, Clause 5:

> "No State shall ... make any Thing but gold and silver Coin a Tender in Payment of Debts ...." (Appendix K, A. 71).

Petitioner carefully and legibly limited his checks to the Respondent Department of Revenue by language such as "Negotiate this instrument strictly in accordance with Article I, Section 10, U.S. Constitution, regarding tender in payment of debts to a state," "Pay to the Order of State of Oregon, Dept. of Revenue/ In Gold and Silver Coin only"; "Nine hundred Ninety-four Ten-Thousandths ounce of Gold and Silver Coin only"; "This check is not to be altered in any form to avoid compliance with Art. I, Sec. 10, Para. 1. However, should this instrument be altered to avoid Lawful, Constitutional compliance, DO NOT CASH." (R. p. 44). Respondents altered each instrument to a number sum and cashed them in direct violation of the instructions on the instrument (R. p. 37). On

the last instrument, Respondents went so far as to stamp "Restriction Not Accepted, Dept. of Revenue - State of Oregon" across the face of the instrument before negotiation (R. p. 44). Such alterations were not authorized by Petitioner and violated the specific language of the instrument as well as state commercial and criminal laws regarding material alteration.

B. Basis for Federal Jurisdiction.

District Court jurisdiction rested upon 28 U.S.C. § 1343 and jurisdiction of the U.S. Court of Appeals for the Ninth Circuit was premised upon 28 U.S.C. § 1291. Jurisdiction of this Court is based upon 28 U.S.C. § 1254(1) and 28 U.S.C. § 2101(c). These statutes are set out in Appendix K (A. 73-76).

ARGUMENT

Reasons for Allowing the Writ

This case challenges as unconstitutional the classifications and collection methods employed in certain state tax schemes. The significance of the case is not limited to the single tax at issue and extends beyond the boundaries of the taxing entity to each of the fifty states. At issue are the limits of state discretion in discriminatory tax schemes and the power of states to require payment of taxes in a form prohibited by the constitution of the United States. The fundamental constitutional rights of every state taxpayer are involved.

Two fundamental reasons appear for granting the writ. First, the Ninth Circuit has decided an important question of federal law in a manner discordant with

the applicable decision of this court in Lane County v. Oregon, supra, 74 U.S. (7 Wall.) 71 (1868). The lower court determination emasculates the rights of citizen-taxpayers and does great violence to the Constitution of the United States.

Second, the petition presents an additional important question of federal law which has not yet been settled by this court: May a state taxing agency arbitrarily discriminate by legislative or executive fiat between members of the same class and subspecialty without violation of the "equal protection of the laws" clause of the Fourteenth Amendment? While this Court has not spoken on this substantial issue, the decision of the courts below do not harmonize with the developing law in similar situations announced by this court.

1. A decision of the Court of Appeals which ignores the prior holding of this court protecting citizen's Constitutional coinage rights.

Assessment and collection of the Tri-Met tax in the manner chosen by Respondents violated the Petitioner's coinage rights under the Constitution of the United States and destroys the contrary holding of the Supreme Court of the United States in Lane County v. Oregon, supra, 74 U.S. (7 Wall.) 71 (1868).

Constitution of the United States, Art. I, § 10, provides:

> "No state shall ... coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payments of Debts ...."

Art. I, § 10 constitutes a controlling and absolute denial of state power to

demand or accept taxes in any form other than gold and silver coin. Chief Justice John Marshall applied an early judicial gloss on this clause in Sturges v. Crowninshield, 17 U.S. (4 Wheat) 122, 204-205 (1819):

> "...neither could these words be intended to restrain the states from enabling debtors to discharge their debts by the tender of property of no real value to the creditor, because for that subject also particular provision is made. Nothing but gold and silver coin can be made a tender in payment of debts."

Petitioner challenges only state power under the Constitution to accept payment of taxes in any form other than gold and silver alloy coin. Petitioner does not here contest the power of the

federal government to make some item other than gold and silver coin a tender in payment of federal taxes. The Courts below apparently misconstrued Petitioner's argument and rested their opinions upon such a federal power.

The opinion of the District Court, adopted by the Ninth Circuit, states:

> "...Article I, Section 10, of the Constitution only prohibits the states from establishing alternative currency to gold and silver coinage. The federal government has such authority, which it has exercised under 31 U.S.C. Section 392 (Supp. 1972)" Appendix H (A. 67).

31 U.S.C. § 392 is reproduced in Appendix K, as is 31 U.S.C. § 314 which appears to be in direct conflict. (A. 76-77). Of course, no mere Congressional statute can

supersede a Constitutional provision or Supreme Court decision.

Petitioner here contends only that the state may not accept payment of taxes in other than constitutionally-mandated form. Alternatively stated, Petitioner contests the state's refusal to accept tender in the constitutionally-authorized form. Petitioner's assertion of his rights as a citizen-taxpayer to make payment to the state in constitutional form has been ignored by the courts below because of their erroneous characterization of the issue.

On three separate occasions, Petitioner attempted to pay the Tri-Met tax in accordance with his constitutional coinage rights emanating from the precise limitation on state governmental authority in Art. I, § 10, Constitution of the United

States. The specific limitations written on the face of the checks are set forth in the statement of facts, supra, and appear in the Record (R. pp. 37, 44). Respondents altered these negotiable instruments, changed the numerical sum, and cashed them in direct violation of the written instructions of the maker-petitioner.

This Court has not addressed the coinage issue since its decision in Lane County v. Oregon, supra, 74 U.S. (7 Wall.) 71 (1868). Congress had enacted legislation providing for the issuance of "United States Notes" (greenbacks) which were "... receivable in payment of all taxes, ... [and] debts ... due to the United States; ... and shall also be lawful money and legal tender in payment of all debts, public and private, within

the United States ..." 74 U.S. (7 Wall.) at 72. An Oregon statute, enacted subsequently, required the revenue authority to pay over all state taxes "in gold and silver coin," id. The state sued Lane County to recover taxes due and owing in gold and silver coin. The county answered, alleging the tender of payment in United States Notes. The state trial and Supreme Courts sustained the state's demurrer to the county's answer. On writ of error, the Supreme Court of the United States affirmed the judgment, holding that the congressional act did not supersede the state taxing power to require collection of taxes in gold and silver coin. Lane County v. Oregon, supra, therefore stands for the proposition that the Congress cannot override a state's constitutional authority to

require payment of taxes in gold and silver coin. Likewise, a state cannot contravene Petitioner's constitutional right to demand that the state shall not make anything but gold and silver coin a tender in payment of this debt. The lower courts should not have ignored this seminal and governing decision.

Art. I, § 10 contains three paragraphs concerning limitations on state power. The prohibitions of the second and third paragraph are prefaced by the phrase "No State shall, without the consent of Congress ...," which indicates that federal Congressional action can override the limitation. Compare the absolute prohibition of the first paragraph which is here at issue: "No State shall ....". It follows that this clause absolutely prohibits any state from

making or accepting any mode of payment of taxes except in gold and silver coin. Such is the mandatory meaning of the word "shall." McDunn v. Roundy, 191 Iowa 976, 181 N.W. 453, 454 (1921); Bay State St. Ry. Company v. City of Woburn, 232 Mass. 201, 122 N.E. 268 (1919).

A review of the Proceedings of the Federal Convention of 1787, the Federalist Papers, and the writings of James Madison and George Mason support this conclusion. The drafters of the constitution had lived through periods of economic distress brought about by irredeemable currency and fiat money, and sought to insure a stable currency in the new nation by limiting the kind of money which could circulate. Petitioner has reproduced excerpts from salient legal and historical authorities demonstrating the frame of

mind of the constitutional draftsmen concerning non-metallic "money" in Appendix M (A. 88).

The stable monetary system guaranteed by the constitution assures to Petitioner and other individual citizens the personal and fundamental rights inherent in a stable monetary system founded upon true money or currency freely redeemable in gold and silver alloy coin. The constitution thus protects Petitioner from the coercive redistribution of income disguised by inflation and protects Petitioner's life, liberty and property against the ravages of inflation and depreciating currency.

These vitally important constitutional protections deserve to be considered, re-established, and guaranteed by this Court. They assure our citizens that the

economic fabric of our society will not become unraveled. These issues merit direct consideration and careful analysis. They should not be shunted aside as the lower courts have done.

2. An important federal policy decision countermanding personal Constitutional rights on an issue heretofore undecided by this court.

The arbitrary executive and legislative exemptions of certain competing employers from the payment of the mass transit tax violates Petitioner's equal protection rights guaranteed by the Fourteenth Amendment. The enactment and application of the Tri-Met tax denies Petitioner equal protection of the laws because other members of Petitioner's class are not required to bear the burden

of the Tri-Met tax. Without question, the equal protection provision of Amendment XIV applies to Petitioner and forms a part of the supreme law of the land. Constitution of the United States, Art. VI, Para. 2, Appendix K (A. 71). All laws, rules and orders of any department or branch of the state or national government must conform with the manifest tenor of the constitution. McCulloch v. Maryland, 17 U.S. (4 Wheat) 316 (1819).

Petitioner belongs to at least two classes of employers, but not all members of these two classes are subject to the Tri-Met tax which has been assessed against Petitioner. The state has not suggested any justification for this discrimination. This unequal treatment violates Petitioner's fundamental equal protection rights under the Fourteenth

Amendment, whether viewed under the "rational basis" test or the more recent "compeling state interest" analysis.

Petitioner belongs to a broad category of employers who render services to the consuming public in contradistinction to employers who manufacture goods. Plaintiff's services to the public rest in the nature of treatment of diseases of the eye. Other services industries, such as banks, savings and loan associations, insurance companies, insurance agents, and other financial institutions reside within the same class insofar as they provide services to the consuming public. Among the services of these competing, tax-immune institutions are the safe keeping of valuables, extension of credit, financing of development and diffusion of risk. Like Petitioner, these institu-

tions fall within the statutory definition of "employer," ORS 267.380 Appendix K (A. 78). Respondents, however, have exempted these employers by administrative rule and thereby effectively penalize Petitioner by enforcing the tax against him, increasing his burden while effecting transfer payments to his competitors for the consumer-services dollar.

Petitioner also belongs to that narrow, professional class of persons within the Tri-Met District that practice his medical sub-speciality, ophthalmology. Even within this narrow strata, Petitioner suffers discrimination in that he must pay the Tri-Met tax while those ophthamologists who receive state salaries but also maintain private practices by using state facilities receive legislative immunity from the burden of the tax as

applies to their private practice.[2]

Petitioner receives no more benefit from the services provided by Tri-Met than the other members of either class. He competes directly (ophthalmologist) or indirectly (service employers) with each member of each class. The application of the tax therefore burdens the Plaintiff while benefiting and subsidizing his competitors. In this manner, the application of the tax violates the fundamental purpose of the equal protection clause which was designed to secure an equality of treatment to all persons without undue favor on one hand or discrimination on the other. State v.

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[2]Petitioner has never asserted that state employees should pay a Tri-Met tax on their state salaries.

Nixon, 10 Wash. App. 355, 517 P.2d 212 (1973).

No rights are more basic and fundamental than those of life, liberty, and pursuit of happiness. Declaration of Independence of the United States, Appendix N (A. 113). The unequal imposition of the Tri-Met tax impairs all three of these inalienable rights because the tax, as applied, inhibits the manner in which the Plaintiff seeks to live his own life and to court his own destiny in a non-violent and orderly manner. Only where a compeling state interest appears can an invasion of such fundamental rights be judicially sanctioned. San Antonio Independent School Dist. v. Rodrigues, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973); Raner v. Edelman, 365 F. Supp. 504 (N.D. Ill. 1973). Legislation

affecting fundamental rights must be narrowly drawn to express only the state interest and to avoid undue restriction on individual rights. Webber v. Aetna Cas. and Sur. Co., 406 U.S. 164, 92 S. Ct. 1400, 31 L. Ed. 2d 768 (1972); Doe v. Wohlgemuth, 376 F. Supp. 173 (W.D. Pa. 1974). Persons similarly situated with respect to the legitimate purpose of the law must receive like treatment. U.S. v. Falk, 479 F.2d 616 (7th Cir. 1972). Equal protection rights apply to the subjects of state taxation. Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 93 S. Ct. 1001, 35 L. Ed. 2d 551 (1973), reh. den. 411 U.S. 910, 93 S. Ct. 1523, 36 L. Ed. 2d 200 (1973).

Petitioner does not challenge the power of the state to levy taxes; he objects only to the manner in which the

burden of this particular tax has been allocated. The State of Oregon has unfairly burdened some members of the relevant classes with the Tri-Met tax while allowing other members the benefits provided by Tri-Met without imposition of the tax. Respondents have never attempted to justify nor to show any compeling state interest in this discrimination between class members.

The exemptions to the tax in this case stem in part from statute and in part from executive dictate. Arguably, ORS 267.380(1)(b), Appendix K (A. 78), and ORS 317.080(4), Appendix K (A. 81), exclude competing medical school ophthalmologists in their private practice. ORS 267.360 exempts insurance companies and their non-resident agents, Appendix K (A. 77). No statutory authority exists in the Tri-

Met enabling statute, ORS 267.010-.990, for Respondent's executive exemption of "state and national banks, savings and loan associations [and] other financial corporations" or resident insurance agents. These immunities by executive fiat not only violate Petitioner's rights to equal protection and equal application of the taxing statute within his class, but also amount to ultra vires acts on the part of the state agencies. Nothing in the enabling legislation permits Respondents to discriminate in the levy of a tax to support its operations. Even if the court could find a compelling state interest to justify the legislative exemptions, the exclusions by executive order must fall as existing beyond the administrative power delegated to Respondents.

The exemption of certain employers within Petitioner's class also fails to meet the requirement of the judicially-established "rational relation" test. A classification must fail if it lacks a rational relation, or rests upon grounds wholly irrelevant to the achievement of the state objection, or if the objective exceeds state power. Wellford v. Battaglia, 343 F. Supp. 143 (D. Del. 1972), aff'd, 485 F.2d 1151 (3rd Cir. 1974); Webber v. Aetna Cas. and Sur. Co., supra; Lindsey v. Normet, 405 U.S. 56, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972). Petitioner does not contest the propriety of establishing a mass transit district; he does challenge the means employed to support such a district. The discrimination within classes of employers lacks any rational relation to the purpose of the transit

system or the method of its funding, and rests upon improper grounds wholly irrelevant to the achievment of the legislative goals.

The District Court, using reasoning which was adopted by the Ninth Circuit, rested its decision on Carmichael v. Southern Coal and Coke Co., 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245 (1936). A divided Supreme Court there upheld the Alabama unemployment compensation tax which exempted certain employers. Carmichael, supra, is easily distinguished from the present controversy. The case upheld a distinction between manufacturing employers and certain menial service employers, services performed by insurance solicitors, service by agricultural and domestic personnel and the like. In contrast, the Tri-Met tax discriminates

within the class of service employers and within the class comprising the Plaintiff's medical sub-speciality. Moreover, Carmichael, supra, relies on a legislative rationale underlying these distinctions whereas Respondents here have made no attempt to justify or rationalize the exemptions involved. Finally, Carmichael, supra, involves precise legislative classifications, whereas the exemptions Petitioner challenges emanate only partially from the legislature, mostly from executive creations, and are additionally vague and overbroad.

Furthermore, Carmichael, supra, relies on the outdated "rational basis" test, e.g., 301 U.S. at 509-10. The modern trend abandons "rational basis" as an exclusive test and requires the state to demonstrate that the burden imposed

upon fundamental rights is necessary to protect a compelling and substantial governmental interest.

Even if Carmichael, supra, and the "rational basis" test retain vitality, the District Court misinterpreted that holding (Appendix H, A. 62-63):

> "Plaintiff has not been denied equal protection. The freedom with which a state may select the subjects of taxation and grant exemptions is not shackled by a rule that it must tax every member of a class or none. Distinctions within a class are presumed to have a rational basis and must be upheld if any conceivable state of facts exists to support them. Carmichael v. Southern Coal & Coke Co., 301 U.S. 495 (1936)." (R. p. 83).

Carmichael, supra, does not stand for such a proposition: it upholds the power of the state to tax classes differently, but not to discriminate between members of the same class, 301 U.S. at 509:

> "...This Court has repeatedly held that inequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation..."

CONCLUSION

The Ninth Circuit departed from fundamental rules of law in sustaining the application of the Tri-Met tax in this case to Petitioner in violation of his Constitutional coinage rights and his right to equal protection of the laws. In so doing, the lower court ignored the solemn holding in Lane County v. Oregon,

supra, the constitutional dictates of Article I, § 10, and Amendment XIV(1) of the United States Constitution, and the trend of the guarantees insured by the equal protection clause. The sweep of this decision extends far beyond the borders of this case, and statute, and order; it affords a means -- if left untrammeled -- to enable the state to discriminate against, and ultimately destroy, any class of citizen who dares challenge as applied, inhibits the manner in which its edicts. Such a rule does not comport with the basic concept of a rule of law. This court should grant petitioner's petition for a writ of certiorari and rectify this assault upon a free society.

Respectfully submitted,

GORDON B. LEITCH, JR,
919 S.W. Taylor Street
Portland, OR 97204
Petitioner Pro se

October, 1976.

THIS SHEET LEFT BLANK FOR CORRECT

PAGINATION

APPENDIX A

Dr. Gordon Leitch, Jr.
919 SW Taylor
Portland, Oregon 97205

Re: Tri Met Tax
Tax Year 1970

Dear Dr. Leitch:

On December 3, 1971 a conference was held with you, A. B. Thomas, Assistant Attorney General, and myself present.

The major issue was whether you are subject to the Tri Met Tax.

At the conference you admitted that you were an employer. Since the law provides no exemption for employers engaged in the healing arts, there is no relief from that direction.

You raised a question about the law being constitutional. The Court of Appeals has held the law is constitutional in Horner's Market v. Tri Met, 90 Adv. Sheets 725 (1970).

Another question raised was the fact that the distraint warrant does not spell out the nature of the tax asserted. I agree that the nature of the tax has to be determined by reference to symbols on the warrant which must be compared with account numbers you have with the Oregon Department of Revenue. However, the lack of specific identification of the tax does not invalidate the warrant.

The amount due is $20.33. You now have a period of thirty days in which to send in your remittance or to file an appeal if you do not agree with my decision. In the event you do neither, the matter will

be referred to the Collection Division for handling.

Very truly yours,

/s/K. P. Bernet

K. P. Bernet

Conference Officer

Income Division

KPB:mw

APPENDIX B

STATE OF OREGON

DEPARTMENT OF REVENUE

In the Matter of the Appeal of Gordon Leitch, Jr., from a Levy by the Department of Revenue of Tri-Met Taxes, Penalty and Interest, for the Year 1970.	OPINION AND ORDER No. TM 72-2

'Gordon Leitch, Jr., hereinafter referred to as "Taxpayer," has appealed to the Department of Revenue from an action of the Income Division of the Department imposing an assessment of Tri-Met tax, penalty and interest for the year 1970.

'A hearing was held before J. J. Ferder, Administrator of the Appeals Division of the Department, on June 9, 1972, in the State Office Building in Salem, Oregon. The following persons

were present:

1. Gordon Leitch, Jr., Taxpayer
2. Alfred Thomas, Assistant Attorney General for the Department
3. Donald Papke, Auditor for the Department.

ISSUE

'The Taxpayer alleges that:

(a) he is not subject to the assessment by Tri-Met;

(b) the assessment is in violation of the Oregon law and the United States Constitution;

(c) the warrant fails to identify the nature of the assessment; and

(d) the state is attempting to collect the tax in counterfeit money or its equivalent.

OPINION

'A Summary of Evidence and Recommendation were prepared by the Administrator of the Appeals Division and reviewed by me.

'The Taxpayer contends that he is not subject to the tax and further, that the tax is unconstitutional.

'The reasoning in Sailors v. Board of Education, 387 U.S. 105, S. Ct. 1549, 18 L. Ed. 2nd 650 (1967) clearly establishes a city's right to create a district and also recognizes a city's power not only to impose a tax but also to select the kind most appropriate.

'The Oregon Court of Appeals, likewise in Horner's Market v. Tri-County Trans., 2 OCA 288 (1970), dealt with a Taxpayer's challenge on the question of taxation without the imposition of a

rigid rule as to the taxing district and is not bound to tax every member of a class or none. The Taxing district may make distinctions of degree, having a rational basis.

'It is my opinion that the Taxpayer is an employer within the geographical area included within the ordinance and further, his position is untenable on the consitutional issue.

'The Taxpayer also argues that the nature of the assessment is not clear, since the warrant does not identify the particular tax involved. The fact that the Taxpayer admitted at the hearing that he was able to identify the nature of the tax by the employer account number assigned to and noted on the warrant, is a clear indication that he was not aggrieved in this respect. His plea is, therefore, denied.

'The Federal Code, 31 USCA, §392, provides as follows:

> "All coins and currencies of the United States including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties and dues." (July 23, 1965, P.L. 89-31, Title I, Sec. 102, 79 Stat. 255)

'Contrary to the assertion of the Taxpayer, the above statute is clear and unambiguous and has been upheld repeatedly by our Federal Courts. His contention is denied.

'My opinion, therefore, is that the record fully supports the assessment and

the Taxpayer is not entitled to any relief.

"NOW, THEREFORE, IT IS HEREBY ORDERED that the assessment is sustained and the appeal is denied.

"Dated at Salem, Oregon, this 18th day of October, 1972.

"DEPARTMENT OF REVENUE

/s/John J. Lobdell
Deputy Director

"Note: If you are dissatisfied with this decision, you may appeal to the State Tax Court in the manner provided by ORS 306.545 within 60 days after the date the Department's order was mailed to you."

APPENDIX C

IN THE OREGON TAX COURT

No. 716

GORDON LEITCH, JR., an individual and Viet Nam War Veteran,

Plaintiff Pro Se,

v.

DEPARTMENT OF REVENUE, State of Oregon

Defendant.

ORDER OF DISMISSAL

Plaintiff's complaint, filed in this court on December 15, 1972, appeals from the Department of Revenue's Order No. TM 72-2 and seeks relief from a levy by the Department of Revenue of taxes levied by the Tri-County Metropolitan Transportation District for the tax year 1970.

The court, having examined the Order No. TM 72-2 and the complaint for

cancellation of transportation district taxes, finds that this is not a matter arising under the tax laws of this state and the Oregon Tax Court does not have jurisdiction of the subject matter of the suit. Girt et al v. Tri-Met et al, 4 OTR 92 (1970); now, therefore,

IT IS HEREBY ORDERED that plaintiff's complaint is dismissed without cost.

Dated this 26th day of December, 1972.

/s/Carlisle B. Roberts

APPENDIX D

IN THE DISTRICT COURT OF THE STATE OF OREGON FOR THE COUNTY OF WASHINGTON

GORDON LEITCH, Jr., an individual, Plaintiff, vs. STATE OF OREGON, Department of Revenue, and TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT, Defendants.	Case No. 33471 DECREE

The above entitled matter came on regularly for hearing before the Honorable Albert R. Musick on the 6th day of July, 1973, at Hillsboro, Oregon upon the Demurrer of Defendants to the Second Amended Complaint for Declaratory Judgment. Two prior Demurrers have been filed herein as to plaintiff's original Complaint and First Amended Complaint and Orders were entered sustaining defendants

demurrers. Plaintiff's Second Amended Complaint sets forth the same issues previously raised.

The Court having heard argument on the matter, and being fully advised, now, therefore

IT IS HEREBY DECREED that the Demurrer be sustained without further leave to amend the Complaint and the matter be dismissed with costs to neither party.

Done this 20 day of July, 1973.

"/s/ Hollie Pihl
JUDGE"

APPENDIX E

Gordon LEITCH, Jr., an Individual,

Appellant,

v.

STATE of Oregon, DEPARTMENT OF REVENUE, and Tri-County Metropolitan Transportation District,

Respondents.

Court of Appeals of Oregon.

Submitted on Record and Briefs

Feb. 21, 1974.

Decided March 11, 1974.

Gordon Leitch, Jr., pro se, appellant.

Lee Johnson, Atty. Gen., and Alfred B. Thomas, Asst. Atty. Gen., Salem, for respondents.

Before SCHWAB, C.J., and LANGTRY and FOLEY, JJ.

LANGTRY, Judge.

Plaintiff appeals from a dismissal of this declaratory judgment proceeding in which he sought judgment, declaring "that no past or future transportation

district taxes are due *** from the plaintiff ***," that any taxes that might be due "be satisfied only in accordance" with U.S. Constitution, Art. I, § 10, and that ORS ch. 267 (Mass Transit Districts) and "succeeding" regulations are unconstitutional and void.

The plaintiff alleged that he was an employer taxed by the Tri-County Metropolitan Transportation District, and that he tendered payment of the taxes by way of checks. Copies of three such checks to the Oregon Department of Revenue drawn on the United States National Bank are attached to pleadings as exhibits. They are drawn for 0.0994 "ounce of gold and silver coin only," 0.2786 "ounces of gold and silver coin only," and "5 00/100 gold-silver coin alloy only or oz. 5/38 gold-silver alloy." The checks are

adorned with repeated instructions against their being altered in any way.

Plaintiff's allegations and argument are about as confusing as are these checks. His argument falls roughly under three general categories: (1) that the transportation district's taxes are constitutionally illegal because they are unequal between persons and classes; (2) that such taxes can only be collected in specie designated in U.S. Constitution, Art. I, § 10, and dollars of gold nine-tenths fine as designated in 31 U.S.C. § 314 (1971); and (3) that he is unconstitutionally subjected to invountary [sic] servitude if he is required to pay the tax.

[1](1). Plaintiff's argument pertaining to inequality of taxation, in its entire essence, was considered and

rejected in Horner's Market v. Tri-County Trans., 2 Or. App. 288, 467 P2d 671, affirmed 256 Or. 124, 471 P.2d 798 (1970):

> "'"*** Neither due process nor equal protection imposes *** any rigid rule of equality of taxation ***."'" (Quoting from Garbade and Boynton v. City of Portland, 188 Or. 158, 191, 214 P.2d 1000 (1950).) 2 Or. App. at 307, 467 P.2d at 680.

[2](2). U.S. Constitution, Art. I, § 10, upon which plaintiff relies, prohibits states from making "any Thing but gold and silver Coin a Tender in Payment of Debts ***." Plaintiff has no cognizable complaint in this regard, for it is the federal government, not the state, that has made "[a]ll coins and currencies of the United States *** legal tender ***." 31 U.S.C. § 392 (Supp. 1972).

[3](3). If plaintiff is made a slave by reason of the necessity for society to tax its individual members, we are all slaves. The argument is frivolous.

We have considered plaintiff's lengthy arguments in his brief, and find all of them wanting.

Affirmed.

APPENDIX F

STATE OF OREGON COURT OF APPEALS

April 10, 1974

Mr. Gordon Leitch, Jr.
919 S.W. Taylor Street
Portland, Oregon 97205

Re: Leitch v. State Department of Revenue and Tri-County Metropolitan Transportation District

Dear Mr. Leitch:

The Court of Appeals has today declined to reconsider its decision in the aboveentitled matter.

Very truly yours,

/s/J. David Gernant
J. David Gernant
Legal Counsel

d
cc: Alfred Thomas
Assistant Attorney General
cc: Supreme Court

APPENDIX G

STATE OF OREGON SUPREME COURT

April 23, 1974

Mr. Gordon Leitch, Jr.
919 SW Taylor Street
Portland, OR 97205

In re: Leitch v. State of Oregon

Dear Mr. Leitch:

The Supreme Court has today denied your petition for review in the above matter.

Very truly yours,

/s/J. David Gernant
J. David Gernant
Legal Counsel

JDG:mr
cc: Mr. Alfred Thomas
Assistant Attorney General

APPENDIX H

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

GORDON LEITCH, JR., an individual,	)	
Plaintiff Pro Se,	)	Civil No. 74-369
v.	)	OPINION
STATE OF OREGON, DEPARTMENT OF REVENUE, and TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT,	)	
Defendants.	)	

Gordon Leitch, Jr.
919 S.W. Taylor Street
Portland, Oregon 97205
Plaintiff Pro Se

Lee Johnson
Attorney General
Alfred B. Thomas
Ted E. Barbera
Assistant Attorney General
100 State Office Building
Salem, Oregon 97310
Attorneys for Defendants

SKOPIL, Judge:

Plaintiff pro se, Gordon Leitch, Jr., challenges the constitutionality of a

mass transit tax which has been imposed by defendants on him and employers similarly situated. Plaintiff was denied declaratory relief by the Oregon Department of Revenue and the Oregon Court of Appeals, both of which upheld constitutionality of the tax. The Oregon Supreme Court denied review.

Plaintiff is within a class of employers upon whom a mass transit tax was levied by the Tri-County Metropolitan Transportation District. As an optha-mologist he also claims membership in "professional" and "service" classes. He contends that his Fourteenth Amendment equal protection rights have been violated because he has not been treated equally with other members of the class, who are given exemptions by statute. ORS 267.380 exempts special sub-classes from the tax,

including certain banks and insurance companies. Plaintiff objects to some of the exemptions granted under ORS Ch. 267, such as those applying to banks and insurance companies. He points out that those employers presumably derive the same benefits from the transit system (Tri-Met) as he does, yet they do not share his burden of financing it through taxes. He also complains that other "professionals" who are employed by the state medical school and who compete with him are exempt by virtue of their public employment. He further complains that they receive public benefits in the form of office equipment, etc., which he does not. His contention regarding the service class is rather confusing.

Plaintiff has not been denied equal protection. The freedom with which a

state may select the subjects of taxation and grant exemptions is not shackled by a rule that it must tax every member of a class or none. Distinctions within a class are presumed to have a rational basis and must be upheld if any conceivable state of facts exists to support them. Carmichael v. Southern Coal & Coke Co., 301 U.S. 495 (1936).

The exemptions granted banks and insurance companies may have been fostered by a desire to promote such enterprises in the public interest and because they were deemed beneficient enterprises. Carmichael, supra; American Sugar Ref. Co. v. Louisiana, 179 U.S. 89 (1900); Aero Mayflower Transit Co. v. Georgia Pub. Serv. Commission, 295 U.S. 285 (1934). To require the state and its subdivisions to tax their employees is

equivalent to requiring them to tax themselves, which is absurd. Carmichael, supra at 513. Each disparity of treatment to which plaintiff objects is supported by a difference between plaintiff's situation and that of those exempted.

Plaintiff's second general ground of complaint is that he was denied due process because the warrant by which he was notified of the tax was unconstitutionally vague. I disagree. Plaintiff concedes that although he had some difficulty, he was able to identify the tax. He suffered no prejudice or deprivation of his rights to combat the validity or amount of the tax.

Whether plaintiff benefits more or less than other employers, or not at all, from the Tri-Met system is immaterial. The system is intended to serve the public,

including employers, and conforms to Fourteenth Amendment requirements. That being true, plaintiff may not complain.

> "A tax is not an assessment of benefits. It is *** a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes." Carmichael, supra at 522.

Plaintiff paid the Tri-Met tax with three checks carefully drawn for "0.0994 ounces of gold and silver coin only", "0.2786 ounces of god and silver coin only", and "5 00/100 gold-silver coin

alloy". The checks contain warnings against any alterations. Plaintiff contends that defendant Department of Revenue violated Article I, Section 10, of the United States Constitution by "altering" the checks to make them payable in regular currency. Plaintiff contends U.S. Treasury bills are "counterfeit" money because they are not restricted to a standard unit of value, as are gold and silver coins, but are subject to inflationary pressures. He invokes quotations from the Federal Convention of 1787, the Federalist Papers, and from various "libertarian" economists in support of his theory.

I share plaintiff's nostalgia and yearning for the days of simpler, more stable monetary systems. Unfortunately, I can find nothing within the Constitution

or the federal laws with which to accomplish that goal. Article I, Section 10, of the Constitution only prohibits the states from establishing alternative currency to gold and silver coinage. The federal government has such authority, which it has exerted under 31 U.S.C. §392 (Supp. 1972).

Finally, plaintiff protests that the Tri-Met tax constitutes involuntary servitude. I share his sense of bondage in regard to taxation but cannot conclude it is forbidden by law.

This Opinion shall constitute findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52(a).

The Clerk of this Court shall enter a judgment to conform with this Opinion.

Dated this 27th day of February, 1976.

/s/Otto R. Skopil, Jr.
United States District Judge

APPENDIX I

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GORDON LEITCH, JR., an individual, Plaintiff Pro Se - Appellant v. STATE OF OREGON, DEPARTMENT OF REVENUE, and TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT, Defendants-Appellees	)	No. 75-1805 MEMORANDUM

Appeal from the United States District Court for the District of Oregon

Before: KOELSCH and HUFSTEDLER, Circuit Judges, and KELLEHER,* District Judge

We adopt the reasoning of the district court.

AFFIRMED.

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* Honorable Robert J. Kelleher, United States District Judge, Central District of California, sitting by designation.

APPENDIX J

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GORDON LEITCH, JR., Plaintiff Pro Se-Appellant, v. STATE OF OREGON, DEPARTMENT OF REVENUE, and TRI-COUNTY METORPOLITAN TRANSPORTATION DISTRICT, Defendants-Appellees	)	No. 75-1805 ORDER

Before: KOELSCH and HUFSTEDLER, Circuit Judges, and KELLEHER,* District Judge.

The panel as constituted in the above case has voted to deny the petition for rehearing. Judge Hufstedler and Judges Koelsch and Kelleher have recom-

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* Honorable Robert J. Kelleher, United States District Judge, Central District of California, sitting by designation.

mended against en banc reconsideration.

The full court has been advised of the suggestion for an en banc hearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

APPENDIX K

UNITED STATES CONSTITUTION

Article I, § 10, cl. 1:

Section 10. [1] No State shall enter into any Treaty, Alliance, or confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Article VI, para. 2:

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and

the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment XIV(1):

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CODE

28 U.S.C. §1254: Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

* * * * *.

28 U.S.C. §1291: Final decisions of district courts

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands,

Islands, except where a direct review may be had in the Supreme Court.

28 U.S.C. §1343: Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to

prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

28 U.S.C. §2101(c): Supreme Court; time for appeal or certiorari; docketing; stay

* * * * *

(c) Any other appeal or any writ of

certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

* * * * *.

31 U.S.C. §314: Standard unit of value

The dollar of gold nine-tenths fine consisting of the weight determined under the provisions of section 821 of this title shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the

Secretary of the Treasury to maintain such parity.

31 U.S.C. § 392: Legal tender

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues.

OREGON STATUTES

ORS 267.360 Business, trade, occupational and professional licenses and fees; exceptions. To carry out any of the powers granted by ORS 267.010 to 267.390, a district may by ordinance raise revenue by licensing and imposing a

fee on any business, trade, occupation and profession carried on or practiced in the district. This section does not empower a district to require licenses of or impose fees on companies that are licensed by the state under ORS 731.358 or 731.362 to transact insurance, as defined in ORS 731.146, or to require licenses of or impose fees upon the representatives of such companies who are not residents of the district.

ORS 267.380(1) Definitions for ORS 267.380 and 267.385. (1) As used in ORS 267.380 and 267.385, unless the context requires otherwise:

(a) "Employer" means:

(A) A person who is in such relation to another person that he may control the work of that other person and direct the

manner in which it is to be done; or

(B) An officer or employe of a corporation, or a member or employe of a partnership, who as such officer, employe or member is under a duty to perform the acts required of employers by ORS 316.162 to 316.212.

(b) "Employer" does not mean any organization exempt from taxation under subsection (4) of ORS 317.080, except that "employer" does include hospitals.

* * * * *.

ORS 267.385 Employer payroll tax: collection; enforcement. (1) To carry out the powers granted by ORS 267.010 to 267.390, a district may by ordinance impose an excise tax on every employer equal to not more than six-tenths of one percent of the wages paid by him with respect to the employment of individuals.

(2) No employer shall make a deduction from the wages of an employe to pay all or any portion of a tax imposed under this section.

(3) The provisions of ORS 305.620 are applicable to collection, enforcement, administration and distribution of a tax imposed under this section.

(4) At any time an employer fails to remit the amount of taxes when due under an ordinance of the district board imposing a tax under this section, the Department of Revenue may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. Such warrant shall be issued, docketed and proceeded upon in the same manner and have the same force and effect as pre-

scribed with respect to warrants for the collection of delinquent income taxes.

ORS 317.080 Exempt corporations. The following corporations are exempt from the taxes imposed by this chapter:

* * * * *

(4) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

* * * * *.

APPENDIX L

DEPARTMENT OF REVENUE
SALEM, OREGON 97310

IMPORTANT NOTICE

Attach to 510T (Rev. 5-71)

Recent legislation has exempted certain nonprofit organizations previously subject to the Tri-County Metropolitan Transportation District Excise Tax. The changes as incorporated in the following definitions are effective beginning October 1, 1971.

If a change of your Tri-Met registration status is necessary, please notify our office.

WHAT IS AN EMPLOYER

"Employer" means a person who is in such relation to another person that he may control the work of that other person and direct the manner in which it is to be done; or, an officer or employe of

a corporation, or a member of employe of a partnership, who as such officer, employe or member is under a duty to perform the acts required of employers. This definition is the same as used by the withholding provisions of the income tax law.

The term "employer" includes any person or organization for whom an individual performs any service as an employe. An employer may be an individual, corporation, partnership, estate, trust, association, joint venture, or unincorporated organization. The term "employer" excludes organizations exempt from tax under ORS 317.080(4) except hospitals. Farmers are required to pay the tax on wages paid for services not solely in connection with the planting, cultivating or harvesting of seasonal agricultural crops.

EXEMPT EMPLOYERS

The following employers are exempt from the tax and are not required to register or file quarterly returns:

City, County, State and Federal Government Units

Public School Districts

Public Education Districts

Public Special Service and Utility Districts

Port Authorities

State and National Banks

Savings and Loan Associations

Other Financial Corporations

Organizations operated exclusively for religious, charitable, scientific, literary, or educational purposes exempt from taxation under ORS 317.080(4) except hospitals

Insurance Companies

Insurance agents are exempt to the extent of their insurance business, but are subject to the tax on portions of the business not related to insurance (such as real estate sales).

WHAT ARE WAGES

"Wages" means remuneration for services performed by an employe for his employer, including the cash value of all remuneration paid in any medium other than cash, except that "wages" does not include remuneration paid:

(1) For services performed in the employ of the United States of America and institutions (excluding hospitals) exempt from taxation under subsection (4) of ORS 317.080.

(2) For domestic service in a private home.

(3) For casual labor not in the course of the employer's trade or business.

(4) For services performed wholly outside the district.

(5) To an employe whose services to the employer consist solely of labor in connection with the planting, cultivating or harvesting of seasonal agricultural crops.

(6) To seamen who are exempt from garnishment, attachment or execution under sections 596, 597, 598 and 601 of Title 46, United States Code.

(7) To individuals temporarily employed as emergency fire fighters.

(8) To employees trust exempt from taxation under section 401 of the Internal Revenue Code.

APPENDIX M

Fundamental Precepts of the Framers of the Constitution Concerning Money

Plaintiff believes research into the basic documents responsible for the formation of the government charged with the protection of the rights and liberties of the people provides convincing argument against the use of a paper tender and explains the meaning of Article I, § 10, United States Constitution. Accordingly, the following original meanings are set forth from the Proceedings of the Federal Convention of 1787:

"... the havoc of paper money had not been foreseen ..."

Mr. Randolph of Virginia,

Tuesday, May 29

"... suppose a majority of the Legislature in favor of paper money or any other Bad measure, ..."

Mr. Mason,

Wednesday, June 6

"The great evils complained of were that the State Legislatures run into schemes of paper money &c, whenever solicited by the people, & sometimes without even the sanction of the people."

Mr. James Madison,

Thursday, June 7

"He [Gerry] had no objection to authorize a negative to paper money and similar measures."

Mr. E. Gerry in Madison's Journal, Friday, June 8

"To the want of this check [of oppression] we owe our paper money ..."

Mr. Madison,

Monday, June 18

"He [Mr. Gorham] considered the emissions of paper money (& other kindred measures) as also aggressions."

Mr. Gorham in Madison's Journal,

Tuesday, June 19

"The rights of individuals are infringed by many of the state laws -- such as issuing paper money."

Mr. Madison,

Tuesday, June 19

"Mr. Govr. Morris opposed it. The internal police, as it would be called & understood by the States ought to be infringed in many cases, as in the case of paper money & other tricks by which Citizens of other States may be affected."

Govr. Morris of Pennsylvania

Tuesday, July 17

"The check provided in the 2d. branch [senate] was not meant as a check on Legislative usurptions of power, but on the abuse of lawful powers, on the propensity in the 1st. branch to legislate too much to run into products of paper money & similar expedients. It is no check on Legislative tyranny. On

the contrary it may favor it, and if the 1st. branch can be seduced may find the means of success."

Govr. Morris,

Thursday, July 19

"Emissions of paper money, largesses to the people -- a remission of debts and similar measures, will at sometimes be popular, and will be pushed for that reason."

Govr. Morris,

Saturday, July 21

"To regulate The exclusive right of coining money (Paper prohibit) no State to be perd. in future to emit Bills of Credit witht. the App: of the Natl. Legisle not to make any (Article) Thing but Specie a Tender

in paymt of debts."

COMMITTEE OF DETAIL, IV

"The Lesistlature [sic] of the United States shall have the (Right and) Power ... to coin Money; to regulate the (Alloy and) Value of (foreign) Coin:"

COMMITTEE OF DETAIL, IX

"He recited the history of paper emissions, and the perseverance of the legislative assemblies in repeating them, with all the distressing effects (of such measures) before their eyes. Were the National legislature formed, and a war was now to break out, this ruinous expedient would be again resorted

to, if not guarded against."

Govr. Morris,

Wednesday, August 15

"The Monied interest will oppose the plan of Government, if paper emissions be not prohibited."

Govr. Morris,

Thursday, August 16

"Congs. he thought would not have the power unless it were expressed. Though he had a mortal hatred to paper money ..."

Col. Mason,

Thursday, August 16

"Mr. Elseworth thought this a favorable moment to shut and bar the door against paper money. The mischiefs

of the various experiements which had been made, were now fresh in the public mind and had excited the disgust of all the respectable part of America. By withholding the power from the new Governt. more friends of influence would be gained to it than by almost anything else -- Paper money can in no case be necessary -- Give the Government credit, and other resources will offer -- The power may do harm, never good."

Mr. Elseworth,

Thursday, August 16

"It will have a most salutary influence on the credit of the U. States to remove the possibility of paper money. This expedient can never succeed whilst its mischiefs are

remembered. And as long as it can be resorted to, it will be a bar to other resources."

Mr. Wilson,

Thursday, August 16

"Mr. Butler remarked that paper was a legal tender in no Country in Europe. He was urgent for disarming the Government of such a power."

Mr. Butler,

Thursday, August 16

"This vote in the affirmative by Virga. was occasioned by the acquiescence of Mr. Madison who became satisfied that the striking out the words would not disable the Govt from the use of public notes as far as they could be safe & proper; & would only cut off the

pretext for a paper currency and particularly for making the bills a tender either for public or private debts."

footnote on vote regarding no paper money taken in Convention,

Thursday, August 16

"He suggested the necessity of preventing the danger of perpetual revenue which must of necessity subvert the liberty of any Country."

Mr. Mason,

Saturday, August 18

"It was moved and seconded to insert the following clause after the last amendment, 'nor make any thing but gold and silver coin a tender in

payment of debts' which passed in the affirmative (Ayes -- 11; noes -- 0.)"

Journal of the Federal Convention,
Tuesday, August 28

"Mr. Sherman thought this a favorable crisis for crushing paper money. If the consent of the Legislature could authorize emissions of it, the friends of paper money would make every exertion to get into the Legislature in order to license it."

Mr. Sherman,
Tuesday, August 28

"No State shall coin money; nor emit bills of credit, nor make anything

but gold or silver coin a tender in payment of debts;"

COMMITTEE OF STYLE

The following authorities shed further light on the issue:

"Their paper money System, founded in oppression & fraud, they are determined to Support at every hazard."

Letter of James Varnum
to Genl Washington,
Newport,
June 18, 1787

"The States will be restricted from paper money."

James Madison to Thos.
Jefferson, Philada.
September 6, 1787

"By the power to lay excises ... the Congress may impose duties on every article of use or consumption -- food, liquor, clothes, glass ..."

Luther Martin: Genuine Information, delivered to the Legislature of the State of Maryland on the proceedings of the General Conv. held at Phila.

"It is further said, that as, in this system we were giving the general government a power under the idea of national character, or national interest, to regulate even our weights and measures, and emitting paper money ..."

Luther Martin, ibid

"... but the convention was so smitten with the paper money dread, that they insisted the prohibition should be absolute."

Luther Martin, ibid

"The same section also puts it out of the power of the States to make any thing but gold and silver coin a tender in payment of debts, or to pass any law impairing the obligation of contracts."

Luther Martin, ibid

"... all that could be done was, to form some limitation to this great political evil [of paper money]."

W. R. Davie in the North Carolina Convention, July 29, 1788

"... although its [paper money] baneful tendency was obvious and undeniable."

W. R. Davie, ibid

"In Rhode Island, the paper money had depreciated to eight for one, and a hundred per cent. with us. The people of Mass. and Conn. had been great sufferers by the dishonesty of Rhode Island, and similar complaints existed against this state. This clause became in some measure a preliminary with the gentlemen who represented the other states. 'You have,' said they, 'by your iniquitous laws and paper emissions shamefully defrauded our citizens.'"

W. R. Davie, ibid

"The Executive powers do not cover more ground, than those inserted by the Convention to whose discretion, the task of enumerating them was submitted."

James Madison to John Tyler, Documentary History of the Constitution, V, 379-390.

"In the internal administration of the States a violations of Contracts had become familiar in the form of depreciated paper made a legal tender ..."

James Madison: Preface to Debates in the Convention of 1787. From Documentary History of the Constitution, III, 1-7. 796, et seq.

"It seems to be forgotten, that the abuses committed within the individual States previous to the present Constitution, by interested or misguided majorities, were among the prominent causes of its adoption, and particularly led to the provision contained in it which prohibits paper emissions and the violations of contracts ..."

James Madison to---; Hunt, the Writings of James Madison, IX 522.

The following excerpts from the Federalist Papers also give substantive meaning to the Constitution and the coinage rights of plaintiff:

"Economic 'heresy' -- paper-money agitation and other evidences of

recurrent populism -- was abroad in the land, ..."

Introduction, Federalist Papers

"... the Confederation was suffering from an epidemic of troubles arising out of paper money agitation ..."

Introduction, op cit.

"The sole power of Congress to regulate the value of money, the stipulation that the States might not issue bills of credit or make anything but gold or silver legal tender or impair the obligation of contract."

Introduction, op cit.

"... and that a dangerous ambition

more often lurks behind the specious mask of zeal for the firmness and efficiency of government. History will teach us that the former has been found a much more certain road to the introduction of despotism than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people; commencing demagogues, and ending tyrants."

Paper No. 1 Hamilton

"A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, ..."

Paper No. 10 Madison

"... We there find that, notwithstanding the affirmative grants of general authorities, there has been the most pointed care in those cases where it was deemed improper that the like authorities should reside in the States, to insert negative clauses prohibiting the exercise of them by the States. The tenth section of the first article consists altogether of such provisions. This circumstance is a clear indication of the sense of the convention, and furnishes a rule of interpretation out of the body of the act, which justifies the position I have advanced and refutes every hypothesis to the contrary."

Paper No. 32 Hamilton

"... following restrictions on the authority of the several states. ... make anything but gold and silver a legal tender in payment of debts; ... ... the exclusive right of Congress to regulate the alloy and value."

Paper No. 44 Madison

"The loss which America has sustained since the peace, from the pestilent effects of paper money on the necessary confidence between man and man, on the necessary confidence in the public councils, on the industry and morals of the people, and on the character of republican government, constitutes an enormous debt against the States charge-

able with this unadvised measure, ..."

Paper No. 44 Madison

"... the same reasons which show the necessity of denying to the States the power of regulating coin, prove with equal force that they ought not to be at liberty to substitute a paper medium in place of coin."

Paper No. 44 Madison

"The power to make any thing but gold and silver a tender in payment of debts, is withdrawn from the States, ..."

Paper No. 44 Madison

"An elective despotism was not the

government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others."

Paper No. 48 Madison

"Hence it appears that, except as to the concurrent authority of the President in the article of treaties, it would be difficult to determine whether that magistrate would in the aggregate, possess more or less power than the Governor of New York. And it appears yet more un-

equivocally, that there is no pretence for the parallel which has been attempted between him and the king of Great Britain. But to render the contraxt in this respect still more striking, it may be of use to throw the principal circumstances of dissimilitude into a closer group.

"The President of the United States would be an officer elected by the people for four years; the king of Great Britain is a perpetual and hereditary prince. The one would be amenable to personal punishment and disgrace; the person of the other is sacred and inviolable. ... The one can prescribe no rules concerning the commerce or currency

of the nation; the other is in several respects the arbiter of commerce, and in this capacity, ... can coin money, ..."

Paper No. 69 Hamilton

"... all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing."

Paper No. 78 Hamilton

"... the emission of paper money ... incompatible ... with the principles of good government."

Paper No. 80 Hamilton

APPENDIX N

THE DECLARATION OF INDEPENDENCE

[in partinent part]

(July 4, 1776)

In Congress, July 4, 1776,

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal,

that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed

to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their dury, to throw off such Government, and to provide new Guards for their future security.-----